

§ 26.44

or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

§ 26.44 Protective orders.

(a) A party, a prospective witness, or a deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) Protective orders may be issued by an ALJ if the ALJ determines such an order is necessary to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense because:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(3) The burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

HEARINGS

§ 26.45 General.

(a) *Time of hearing.* The hearing shall commence not later than 90 days following the date of the Government's filing of the complaint and response with the Docket Clerk under § 26.38, unless the time is extended for good cause. The ALJ shall provide written notice to all parties of the reasons for any extension of time.

(b) *Location of hearing.* The hearing shall be held in a place most convenient for the respondent and witnesses, or in such other place as may be agreed upon by the parties and the ALJ.

(c) *Notice of hearing.* The ALJ shall issue a notice of hearing to all parties specifying the time and location of the hearing, the matters of fact and law to be heard, the legal authority under which the hearing is to be held, a de-

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scription of the procedures for the conduct of the hearing, and such other matters as the ALJ determines to be appropriate.

(d) *Exceptions for Program Fraud Civil Remedies Act matters.* For Program Fraud Civil Remedies actions, the hearing is commenced by the issuance of a notice of hearing and order by the ALJ, as set forth in 31 U.S.C. 3803(d)(2)(B). Hearings for Program Fraud Civil Remedies Act matters shall be located in accordance with 31 U.S.C. 3803(g)(4).

(e) *Burden and standard of proof.* HUD shall prove the respondent's liability and any aggravating factors by a preponderance of the evidence. Respondent shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(f) *Public hearings.* Unless otherwise ordered by the ALJ for good cause shown, the hearing shall be open to the public.

§ 26.46 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. In order to be admissible, any written statement must be provided to all other parties along with the last known address of the witness, in a manner that allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing.

§ 26.47 Evidence.

The ALJ shall admit any relevant oral or documentary evidence that is not privileged. Unless otherwise provided for in this part, the Federal Rules of Evidence shall provide guidance to the ALJ's evidentiary ruling, but shall not be binding. Parties may object to clearly irrelevant material, but technical and hearsay objections to testimony as used in a court of law will not be sustained. The ALJ may, however, exclude evidence if its probative value is substantially outweighed by confusion of the issues, or by considerations of undue delay, waste of time, or